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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,044	11/17/2003	Aaron C. Poot		2783

31083 7590 10/20/2005

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OMAHA, NE 68124

EXAMINER
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HOGUE, GARY CHAPMAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/715,044	Applicant(s) POOT, AARON C.	
	Examiner Gary C. Hoge	Art Unit 3611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-10,12-16,18-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7,8,18,19 and 23-26 is/are allowed.
- 6) ☒ Claim(s) 1-5,9,10,12-16,20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunne (3,564,783).

Dunne discloses an elevated box truss **26** extending over a roadway and having opposite ends secured to upstanding supports **28, 30**; the box truss being comprised of a plurality of box truss sections secured to one another in an end-to-end relationship (Fig. 2), at least one of the box truss sections adapted to have a messaging sign **20** mounted therein. The box truss sections have horizontally spaced-apart first **34** and second **36** upper tubes and horizontally spaced-apart first and second lower tubes, first truss members **46** interconnecting the first and second upper tubes, second truss members interconnecting the first and second lower tube members, third truss members **44** interconnecting the second upper tube and the second lower tube, and fourth truss members interconnecting the first upper tube and the first lower tube. A messaging sign **20** is mounted in the one box truss section. At least a portion of the messaging sign is positioned between the first upper tube, the first lower tube, the first truss members, the second truss members, and the third truss members.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunne (3,564,783) in view of Safavi et al. (2004/0123501).

Dunne discloses the invention substantially as claimed, as set forth above. However, Dunne does not disclose a specific type of sign. Safavi teaches that it was known in the art to provide a sign that is both variable and digital. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a variable, digital sign, as taught by Safavi, in the system disclosed by Dunne, in order to make the message of the sign easily changeable.

5. Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunne (3,564,783).

Dunne discloses the invention substantially as claimed, as set forth above. However, the sign disclosed by Dunne is not adjustable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sign adjustable because it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

6. Claims 9, 10, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunne (3,564,783) in view of Reinitz (3,952,978).

Dunne discloses the invention substantially as claimed, as set forth above. However, there is no walkway within the truss. Reinitz teaches that it was known in the art to place a walkway within a truss in order to allow access to a sign mounted on the truss. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a walkway in the truss disclosed by Dunne, as taught by Reinitz, in order to allow easy access to the sign.

***Allowable Subject Matter***

7. Claims 7, 8, 18, 19 and 23-26 are allowed.

***Response to Arguments***

8. Applicant's arguments filed July 28, 2005 have been fully considered but they are not persuasive.

Claims 1 and 12, and the claims dependent therefrom, were rejected in view of Dunne. Applicant's attention is drawn to the fact that the Examiner cited *two* patents to Dunne (U.S. Pat. Nos. 3,564,783 and 4,015,349). As clearly set forth in the Office action, the rejections were based on U.S. Pat. No. 3,564,783. Indeed, Applicant repeated this number in his arguments. However, based on those arguments, it is clear that Applicant was looking at U.S. Pat. No. 4,015,349. This is clear, for example, when Applicant states, "the numeral 28 does not refer to a support, but refers to the longitudinal axis of the rotor. The numeral 30 does not refer to an upstanding support since the entire structure is supported on the support 14 having the beam 12 secured thereto." This is true of U.S. Pat. No. 4,015,349 to Dunne, but is *not* true of U.S. Pat. No. 3,564,783 to Dunne, upon which the Examiner's rejections were based.

*Conclusion*

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

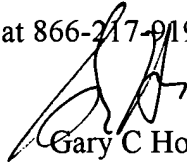
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary C Hoge  
Primary Examiner  
Art Unit 3611

gch